IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1600 OF 2004

Pravin Dhabolkar .. Petitioner

V/s

The State of Maharashtra .. Respondent

Mr.A.M. Saraogi for the Petitioner.

Mr.I.S. Thakur, A.P.P. for the Respondent State.

Mr.N. Sejpal for the Intervener.

CORAM : H.L. GOKHALE &
SMT. V.K. TAHILRAMANI, JJ.

DATE : 11TH AUGUST 2004

P.C. :

1. Heard Mr.Saraogi for the Petitioner. Mr.Thakur, A.P.P. appears for the Respondent State. Mr.Sejpal has appeared as an intervener on behalf of one Jaywant Parab and Shailesh Fanse, who are accused in pending Sessions Case No.942 of 2001.

2. The present petition seeks a direction to the State to look into the grievances of the Petitioner and investigate the matter further as per his application made to the Sessions Court on 3rd August 2004.

3. The circumstances leading to this petition are as follows:-

The Petitioner was attacked by some unknown persons on 16th February 2000 at about 5.30 p.m. at Four Bungalows, Andheri (West). He received very serious injuries including head injuries and it is almost a miracle that he is surviving that attack. It is his case that the above referred Jaywant Parab and Shailesh Fanse are behind the attack and, therefore, on a complaint being lodged, the police have registered the FIR and the above referred case arising therefrom is pending in the Sessions Court, Mumbai.

4. It is the further case of the Petitioner that sometimes at the beginning of August 2004, he received information from one Pradeep Kadam that one Avinash Baviskar had met him and had told him that at the instance of Jaywant Parab and Shailesh Fanse, Avinash Baviskar, Sunil Masurkar and Bhalchandra Ambode had acted leading to the particular assault. He, therefore, made an application to the learned Sessions Judge on 3rd August 2004 applying that the necessary investigation be directed. The learned Sessions Judge, who heard the matter, noted that this application was being made belatedly and by her order on the aforesaid application (Exhibit-28)

passed on the same day rejected that application. It is, therefore, that this petition has been filed and investigation is sought as above.

5. Mr.Saraogi has also tendered an application to amend the petition whereby he has sought to add another prayer that the said order passed on 3rd August 2004 below Exhibit-28 be also set aside.

6. Mr.Sejpal, learned counsel for the accused in the aforesaid Sessions Case, has intervened in this matter. He has pointed out that this case has been pending for last more than 4 years. He also pointed out that when the case was ultimately taken up for evidence, the complainant, who is the Petitioner herein, remained absent for nearly 4 months and ultimately when his evidence was going to start, he has tendered the aforesaid application. In his submission, the learned Judge was right in rejecting the application when it was made so belatedly. He further submitted that the accused should not be made to suffer their trial any further. The accused have admitted all the documents which were produced by the prosecution and the trial was expected now to be completed in a short time since there would not be many witnesses from the prosecution.

7. Mr.Saraogi, learned counsel for the Petitioner, on the other hand, submitted that this is a case where very serious injuries were received by the

Petitioner. In the facts of the case, it was not possible to gather information as to who are the assailants. It is only now that this information has become available. Mr.Sejpal submits that the information has now come about because the Petitioner is having a political and business rivalry with the accused and it is, therefore, that belatedly such application is made and it should not be entertained any more.

8. To counter the submission of Mr.Sejpal, Mr.Saraogi pointed out that the accused are on bail and if at all any prejudice is going to be caused to them, he has instructions to make a statement and he has volunteered that he will pay appropriate costs to the accused. This is inspite of the fact that it is the Petitioner who has suffered in the assault and yet with a view to see to it that no grievance be made with respect to delay, he has instructions to make a statement that the accused will be offered cost. On a query from the Court, he has stated that the Petitioner is ready to pay costs to the tune of Rs.25,000/- to 50,000/- to each of the accused.

9. Mr.Thakur, learned A.P.P. for the State, submitted that the State be provided some more time to look into the clue which is now provided. He submitted that though the application by the Petitioner is a belated one, with a view to see to it that no grievance is left, the request made by him be entertained and the concerned police station be given 6 weeks time to

complete the further investigation. He has made the aforesaid statement on the instructions of P.P. Akolkar from Oshiwara Police Station.

10. We have considered the submissions made by the Petitioner as well as by the Intervener and the State. We appreciate the anxiety expressed by Mr.Sejpal that the trial is being delayed on account of such last minute application. At the same time, we also feel that the Petitioner, who has suffered very serious injuries, should not leave the court with a feeling that when he has provided some clue to the prosecution, that clue was not followed up. We appreciate the offer made by Mr.Saraogi to pay the costs so that the accused are compensated to some extent. In a matter like this, though the application is filed belatedly, it would be desirable that the concerned police station follows up the clue given by the complainant and if they get additional material, they will file a supplementary charge-sheet as permitted under section 173(8) of Cr.P.C.

11. In the circumstances, we grant the prayer made by the Petitioner and direct the State to see to it that the clue made available by the Petitioner is followed up and they make a necessary report within the time provided to the concerned court. The order passed by the learned Judge rejecting the application is set aside. The trial pending before the Sessions Court will stand stayed for a period of 6 weeks from today. We accept the offer made by

Mr.Saraogi. The Petitioner will pay to each of the two accused the costs of Rs.25,000/-. The Petitioner will deposit this amount in the Sessions Court within 4 days from today and it will be open to the accused to withdraw the same on an authenticated copy of this order being made available. We would like to record that the costs were offered by Mr.Saraogi to show the bonafides of the Petitioner and that is why the Petitioner has been directed to deposit these costs. The order to deposit the costs and liberty to the accused to withdraw the same does not mean any reflection on the part of this Court on the merits of the case.

12. Petition stands disposed of.

13. Authenticated copy of this order be made available.

(H.L. GOKHALE)

(SMT.V.K. TAHILRAMANI)